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**Testimony in Support of House Bill 2035
Clarifying the Subject Matter of Criminal Post-trial Motions for Correction of Sentence**

**Presented to the Senate Judiciary Committee
By Assistant Solicitor General Natalie Chalmers**

March 17, 2017

Chairman Wilborn and Members of the Committee:

Thank you for the opportunity to testify on behalf of Attorney General Derek Schmidt in support of House Bill 2035. This bill largely codifies existing case law and clarifies that a motion to correct an illegal sentence cannot be used to apply a change in law that occurs after a sentence is lawfully pronounced.

With the exception of the last sentence in subsection three, all of the proposed language in this bill codifies existing case law.¹ Thus, the language merely puts everyone, including defendants, on notice of the law without having to resort to reading case law to determine the scope of K.S.A. 22-3504. Additionally, the addition in subsection one should end ongoing appellate litigation to change longstanding precedent regarding whether the defendant is entitled to a hearing, even when it is clear that the defendant's motion to correct illegal sentence has no merit.² Though the case law is clear on this point, the current statutory text lends to repeated litigation.

Meanwhile, the last sentence is proposed to stem the tide of motions to correct illegal sentences facing district and appellate courts due to recent development in the United States Supreme Court's case law. Currently, numerous sentences are under attack because the Kansas Supreme Court has extended United States Supreme Court's precedent to nullify the scoring of pre-1993

¹ *State v. Lee*, 304 Kan. 416, 417 (2016) (“An illegal sentence is a sentence imposed by a court without jurisdiction; a sentence that does not conform to the statutory provision, either in the character or the term of the punishment authorized; or a sentence that is ambiguous with respect to the time and manner in which it is to be served.”); *State v. Gray*, 303 Kan. 1011, 1013 (2016) (the district court may dismiss a motion to correct an illegal sentence without hearing if “the motion, files, and records of the case conclusively show the defendant is not entitled to relief.” [Citations omitted.]”).

² See e.g. *Gray*, 303 Kan. at 1013.

residential burglaries as person crimes.³ And many other challenges are pending regarding whether out-of-state crimes can be scored as person felonies. Because the statute permits a motion to correct illegal sentence to be filed at any time, the retroactive extension of such case law is consistently being litigated, with a fair amount of success.

The inability to score crimes as person felonies has the potential to greatly reduce a defendant's sentence under the Kansas sentencing guidelines. While inaccurate sentences should be capable of correction at any time, sentences that were lawfully imposed at sentencing should not be set aside due to changes in the law that occur at a later time. Thus, the bill's language seeks to ensure the continued incarceration of dangerous criminals and that changes in law do not undo plea agreements that relied on the law in effect at the time of the plea and sentencing. In addition, the language should protect from future unforeseen changes in the law.

Finality in sentencing protects the preservation of judicial resources and protects victims from having to appear in multiple court hearings due to unforeseen changes in law. For these reasons, the Office of the Attorney General would respectfully request this committee's favorable consideration of this bill. Thank you for your time.

³ *State v. Dickey*, ___ Kan. ___, 380 P.3d 230 (2016).